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USSN 09/892,612

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s) : Jean-Francois BOUQUET et al.
U.S. Serial No. : 09/892,612
Filing Date : June 28, 2001
Patent No. :
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Art Unit : 1645
For : IMMORTALIZED AVIAN CELL LINES

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PETITION TO REVIVE AND WAIVE RULES

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Sir:

INTRODUCTION AND RELIEF REQUESTED

Pursuant to 37 CFR 1.137(a), 1.181-183, and any other Rules, it is respectfully requested that the Declaration and Power of Attorney submitted herewith be accepted, that this application and patent be revived, with the effect that the Declaration and Power of Attorney filed herewith be accepted *nunc pro tunc* (accepted now as if it were filed when a correct Declaration and Power of Attorney should have been filed during prosecution), and that any necessary Rules be waived to achieve the relief herein requested.

The fees set forth in 37 CFR 1.17(m) and 1.17(h) (\$1330+\$130=\$1460) are submitted herewith by authorization to charge a credit card therefor, and the Commissioner is hereby authorized to charge any deficiency in fees or credit any overpayment in fees to Deposit Account No. 50-0320.

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FACTS & ARGUMENT
The Declaration and Power of Attorney originally filed in this application may have had "inventor" signature(s) affixed to it by a person who was not an inventor, and who was not authorized to sign on behalf of inventor(s), without deceptive intent on the part of the inventors, the assignee, the US attorneys, the foreign firm involved, and individuals thereof.

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More in particular, a French industrial property counsel firm (Conseils en Propriété Industrielle) ("C") was responsible for transmitting formal papers such as the Declaration and Power of Attorney, and Assignment, to inventors, obtaining signatures thereon, and forwarding the executed formal papers to patent law firms outside of France for filing with the respective Patent Offices.

With respect to the period of time of 1998 to the present: Individual "HC" was and is in the employ of a C as a clerk.

With respect to the period of time of 1998 to the present: Until her retirement on December 31, 2000, "CD" was in the employ of C as a foreign section assistant supervisor; a superior to HC.

With respect to the period of time of 1998 to the present: Until her retirement on December 31, 1999, "D" was Head of the Administrative Patent Department of C, and at the time a member of the Comité de Direction (Board) of C. D was permitted to run the Patent Department relatively autonomously within C.

On January 1, 2000, "E" became Head of the Administrative Patent Department, and she still holds that position today.

On January 1, 2001, "CP" replaced CD as a supervisor, whom E supervises, and who supervises HC.

Individual "X" was CEO of firm C at the time the events occurred, and is currently a member of the Comité de Direction (Board) of C.

Individual "Y" is currently the CEO of firm C and authorized to speak on its behalf.

Day-to-day management decisions of C are made by the CEO, the Board makes the significant decisions of the business of C.

As Head of the Administrative Patent Department, on behalf of C, D was, and E is, responsible for organizing and implementing formalities in patent applications; for instance, transmitting formal papers to be executed, receiving executed formal papers, and transmitting executed formal papers to patent law firms outside of France for filing with Patent Offices outside of France and the European Patent Office.

Accordingly, on behalf of C, with C acting as an agent for a client, D instructed and E instructs patent law firms outside of France to do certain acts, such as file patent applications and file executed formal papers for patent applications.

Those who worked under D, and those who work under E, CD, CP and HC, were likewise in charge of formalities.

D and E had authority by the Board to sign certain types of letters on behalf of C, and they could delegate others to sign for them, excluding staff such as clerks, e.g. HC.

Thus, D was in a position at C in which she spoke on behalf of C in certain matters, and E is in a position at C in which she speaks on behalf of C in certain matters.

On or about January 21, 2004, January 23, 2004 and February 11, 2004 certain inventors had affirmatively reported to a US law firm (the undersigned) that signatures on certain formal papers transmitted by C to that firm for filing (and as a result filed by that firm with the USPTO in certain patent applications) were not their signatures.

On or about February 17, 2004, promptly after the reports by the inventors to the US law firm, the US law firm (the undersigned) inquired of C as to the chain of custody of formal papers.

C promptly investigated.

As part of the investigation, CD, HC, D, E, CP, and X were interviewed by C.

HC admitted to imitating inventor signatures on documents on express instructions of her supervisor CD, starting from 1998 until CD's retirement on December 31, 2000.

HC assured C that she never did or was requested to do that after December 31, 2000. That is, during the tenure of CP as HC's superior, HC did not, and was not requested, to copy inventor signatures.

CD also admitted instructing HC to imitate inventor signatures on documents, as well as herself imitating inventor signatures on documents.

CP stated that she had not copied inventor signatures on documents, and had not instructed anyone else to do so.

More in particular, CP stated that during her tenure as a supervisor, she has not imitated inventor signatures; HC has not been instructed by me to imitate inventor signatures to documents; and, to the best of her knowledge, HC has not done so during my tenure as supervisor.

Furthermore, CP stated that during her tenure at C and prior to being advised of the admissions by HC and CD, she had no knowledge that HC and CD previously imitated inventor signatures on documents. And, CP stated that during her tenure as a supervisor, after learning of

the admissions by HC and CD, HC has been instructed to not imitate inventor signatures.

Furthermore, with respect to the aforementioned investigation, I too was questioned by C.

Indeed, when interviewed by C, CP confirmed, and in an accompanying Declaration also confirms, that she has not copied inventor signatures on documents, and did not instruct and has not instructed HC to copy inventor signatures on documents.

Accordingly to the best of CP's knowledge and belief, since she assumed the position of supervisor under E, formerly held by CD, there has been no imitating of signatures at C by HC, and there certainly has been no imitating of signatures by CP at C since she began her employment at C.

Thus, from January 1, 2001 to the present, to the best of CP's knowledge and belief, there has been no imitating of signatures at C.

Neither HC nor CD was authorized by any of the inventors to affix inventor signatures to documents.

Neither HC nor CD was authorized by anyone at C to affix inventor signatures to documents.

Neither HC nor CD was authorized by the assignee(s) to affix inventor signatures to documents

None of the individuals D, E, X, and Y, at the time HC and CD affixed unauthorized inventor signatures to documents, and at the time CD instructed HC to so do, were aware of CD's instructions and CD's actions and HC's actions; and therefore, none of D, E, X, Y, and firm C, authorized such CD's instructions and CD's actions and HC's actions.

D, E, X and Y, and firm C acted without deceptive intent.

According to HC and CD, generally, there were two instances when formal documents had inventor signatures affixed to them: When the individuals were located in distant geographic regions; and, when there had been a mistake on the document signed previously by the individuals.

HC had not been instructed that original inventor signatures were indeed required for the US and certain countries, and in some countries C is authorized to sign documents on behalf of the Applicant. When she affixed inventor signatures to documents, she did not intend to deceive anyone. It is respectfully submitted that HC acted without deceptive intent.

CD did not appreciate the gravity of imitating inventor signatures and regrets having done so and having instructed HC to do so.

The investigation by C also involved C reviewing all of the files for the client for the period of 1995 to the present, which is the entire period during which C filed patents for the client. More in particular, E, on behalf of C, reviewed all of the files from a period of 1995 to the present for the client for each country that the law of which required that the inventor himself sign documents. E did not review those files upon which CP worked, in view of the comments by CP and HC during their interviews that CP was not involved.

From this investigation:

- C learned that certain files contained what appeared to be original signed formal papers, received in C's office after what appeared to be a copy of signed documents had been transmitted to the US patent law firm.
- C also learned that in certain files an initial or second execution of a formal paper was requested by the US patent law firm, and that in these and certain additional files the turnaround of the formal papers seemed unusually fast, given the number and/or location of the inventors.
- C further learned that in certain files the inventors were located in distant geographic regions, and it appeared that certain employees of C felt pressure to meet deadlines for formal papers.
- C additionally learned that in certain files the original inventor-executed formal papers that were received by C were mislaid, and formal papers that had inventor signatures affixed to them by employees of C, without the authorization of C, without the authorization of the assignee(s) and without the authorization of the inventor(s), were sent to the foreign associate or were sent to the US patent firm.
- C yet further learned that in one Indonesian case, there may be a doubt as to whether the formal papers were actually signed by the inventors.
- C even further learned that in one Taiwanese case, there had been a mistake on the document signed previously by the individuals, and it appears that papers that had inventor signatures affixed to them by employees of C, without the authorization of C, without the authorization of the assignee(s) and without the authorization of the inventor(s), were sent to the foreign associate.

And C identified these files as the files that may have had formal papers filed at the applicable Patent Office that may have had inventor signature(s) affixed to them that were not the signature(s) of the inventor(s).

It submit that C diligently undertook a good faith investigation to identify the files in which inventor signatures were affixed to documents by employees of C without the authorization of C, without the authorization of inventor(s) and without the authorization of assignee(s), and that C acted without deceptive intent.

Declarations from HC, CD, CP, D, E, X and Y in support of this Petition are submitted herewith as Exhibits 1, 2, 3, 4, 5, 6 and 7.

The inventors were unaware of CD's instructions and CD's actions and HC's actions; did not authorize those instructions or actions; and hence, acted without deceptive intent.

The inventors were supplied with a copy of the prosecution to date, and a new Declaration and Power of Attorney, as well as a Declaration in support of this Petition.

The inventors' Declaration and new Declaration and Power of Attorney are submitted as Exhibit 8 and 9.

The Assignee ("A") was unaware of CD's instructions and CD's actions and HC's actions; did not authorize those instructions or actions; and hence, acted without deceptive intent.

A, through its in house patent counsel, with the assistance of outside patent counsel, investigated what had occurred, and stated that A and its in house patent counsel were unaware, at the time of filing the original Declaration and Power of Attorney in the present application, that it may not have actually had signatures of inventor(s) affixed to it; and, at the time of filing the original Declaration and Power of Attorney in the present application, A and its in house patent counsel believed that C had transmitted to the A's US patent law firm a Declaration and Power of Attorney that had actual signatures of inventor(s) affixed to it.

Indeed, at the time of filing the original Declaration and Power of Attorney in the present application and any other signed documents from C, A and its US patent firm and A's in house patent counsel had trusted C as to the signatures on such documents and believed that those documents had actual signatures; A, its in house patent counsel and A's attorneys had no reason to doubt or not trust C.

Thus, A and its in house patent counsel acted in good faith and without deceptive intent with respect to the filing with the USPTO of the original Declaration and Power of Attorney, and any other signed documents A's US patent law firm received from C for filing with the USPTO.

Furthermore, A and its in house patent counsel also have taken steps to prevent this situation from arising in the future, including dismissing C as a representative of the A as to patent matters.

A Declaration on behalf of A is submitted herewith as Exhibit 10.

The attorneys that filed the original Declaration and Power of Attorney were unaware of CD's instructions and CD's actions and HC's actions; did not authorize those instructions or actions; and hence, acted without deceptive intent.

The attorneys were unaware, at the time of filing the original Declaration and Power of Attorney in the present application, that it may not have actually had signatures of inventor(s) affixed to it; and, at the time of filing the original Declaration and Power of Attorney in the present application, the attorneys believed that C had transmitted to them a Declaration and Power of Attorney that had actual signatures of inventor(s) affixed to it.

Indeed, at the time of filing the original Declaration and Power of Attorney in the present application and any other signed documents from C, the attorneys had trusted C as to the signatures on such documents and believed that those documents had actual signatures; the attorneys had no reason to doubt or not trust C.

Thus, the attorneys acted in good faith and without deceptive intent with respect to the filing with the USPTO of the original Declaration and Power of Attorney, and any other signed documents received from C for filing with the USPTO.

A Declaration on behalf of the attorneys that filed the original Declaration and Power of Attorney is submitted herewith as Exhibit 11.

In addition to the foregoing, the undersigned adds that in March 2004, he became aware that in certain applications of A, a clerk may have affixed unauthorized inventor signatures to documents, and promptly (within days) contacted the USPTO, inquiring how to remedy the situation. It was suggested that a Petition, such as this document, with supporting Declarations, such as the Declarations that accompany this paper, be filed, as the application may be considered abandoned for failing to timely file a correct Declaration and Power of Attorney.

The undersigned then undertook investigating the number of applications having the signature issue, including, *inter alia*, personally interviewing the declarants of Exhibits 1 to 7 and personally obtaining the executed Declarations in support of this Petition, preparing the inventor, assignee and attorney declarations, coordinating providing the inventors with a copy of the prosecution history and new declaration and power of attorney, and preparing this Petition.

Accordingly, it is respectfully asserted that the undersigned and the inventors and the assignee acted diligently and promptly, especially as numerous US applications were uncovered in the investigation, each of the US applications had a plurality of inventors, and the declarants of Exhibits 1 to 7 are located in France, and meeting with them to investigate the situation and prepare their Declarations required coordinating many schedules, and addressing certain issues of French law.

Therefore, D, E, X, Y, firm C, the inventors, A, A's in house patent counsel, and the US patent attorneys involved, including the undersigned and his firm, acted without deceptive intent, and this paper with supporting Declarations and a correct Declaration and Power of Attorney is being filed promptly.

Furthermore, the abandonment of the application was unintentional, and this paper with the supporting Declarations has been prepared and filed without intentional delay.

Even further still, any delay caused by the abandonment of this application was unintentional.

CONCLUSION

It is equitable to not hold the actions of HC and CD against the inventors and A; the interests of justice call for granting the relief herein requested.

Accordingly, pursuant to 37 CFR 1.137(a), 1.181-183, and any other Rules, it is respectfully requested that the Declaration and Power of Attorney submitted herewith be accepted, that this application and patent be revived, with the effect that the Declaration and Power of Attorney filed herewith be accepted *nunc pro tunc* (accepted now as if it were filed when a correct Declaration and Power of Attorney should have been filed during prosecution), and that any necessary Rules be waived to achieve the relief herein requested.

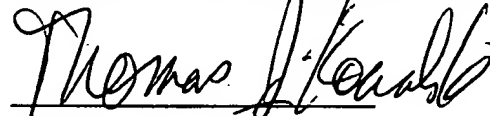
Also, the undersigned thanks the USPTO for the many courtesies extended in suggesting how to address the present situation.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of this application, any patent issuing thereon, or any patent to which this verified statement is directed.

Respectfully submitted,

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